

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:

**JOE JESSE MONGE and
ROSANA ELENA MONGE,**

Debtors.

**JOE JESSE MONGE and
ROSANA ELENA MONGE,**

Plaintiff,

v

**ALICIA ROJAS and FRANCISCO
JAVIER JAYME,**

Defendants,

CASE NO: 09-30881-lmc

CHAPTER 11

ADVERSARY NO. 10-3019-lmc

**PLAINTIFFS/COUNTER-DEFENDANT'S MOTION TO DISMISS
COUNTERCLAIM AND REQUEST FOR ABATEMENT OF PROCEEDINGS
PURSUANT TO F.R. CIV. P. RULE 12(b)(6) FOR FAILURE
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

TO THE HONORABLE LEIF M. CLARK, UNITED STATES BANKRUPTCY JUDGE:

Come now, Joe Jesse Monge and Rosana Elena Monge, Plaintiffs/Counter-Defendants in the above-entitled and numbered case by and through Sidney J. Diamond, of Sidney Diamond, P.C., their attorney and files this Motion to Dismiss Counterclaim and Request for Abatement of Proceedings Pursuant to F.R. Civ. P. Rule 12(b)(6) For Failure to State a Claim Upon Which Relief Can be Granted and in support thereof would respectfully show the Court as follows:

1. Debtors' Plan of Reorganization provides for rejection of all executory contracts not specifically assumed by Debtors. Defendants/Counter-Plaintiffs' claims are made on the basis of the existence of an executory contract which has been specifically rejected by Debtors/Plaintiffs.

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2. The executory contract made the basis of Defendants/Counter-Plaintiffs claim has been rejected by the Debtors in their Plan of Reorganization which has been confirmed by order of this court and such order is final and non-appealable.

3. Therefore, Plaintiffs/Counter-Defendants state that pursuant to F.R. Civ. Proc. Rule 12(b)(6) the Defendants/Counter-Plaintiffs counterclaim fails to state a cause of action upon which relief can be granted and should be dismissed.

WHEREFORE, the Plaintiffs/Counter-Defendants pray:

1. That Defendants/Counter-Plaintiffs' Counterclaim be dismissed for failure to state a claim upon which relief can be granted; and,

2. The Plaintiffs/Counter-Defendants have such and further relief as they make show themselves entitled.

DATED: July 26, 2010.

Respectfully submitted,

SIDNEY DIAMOND, P.C.

/s/ Sidney J. Diamond

By: Sidney J. Diamond
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CERTIFICATE OF SERVICE

I, Sidney J. Diamond, do hereby certify that on July 26, 2010, a true and correct copy of the foregoing Motion to Dismiss Counterclaim and Request for Abatement of Proceedings Pursuant to F.R. Civ. P. Rule 12(b)(6) For Failure to State a Claim Upon Which Relief Can be Granted was served, by depositing the same in the United States Mail, properly addressed and postage prepaid, or by fax or email as noted, to the following parties:

THE DEBTORS:

Joe Jesse Monge and
Rosana Elena Monge
51 Sierra Crest Dr.
El Paso, TX 79902

ATTORNEY FOR DEFENDANTS/COUNTER-PLAINTIFFS:

Lane C. Reedman
Guevara, Baumann, Coldwell & Reedman, LLP
4171 N. Mesa St., Suite B-201
El Paso, TX 79902

/s/ Sidney J. Diamond
Sidney J. Diamond